IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY EIGHTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI JUSTICE N.V. RAMANA

WRIT PETITION NO.21175 of 2004

Between:

Smt. S.Siva Jyothi, W/o.S.Sai Prasad,
R/o.H.NO.1-7-572/4B/1, Zamistanpur, Hyderabad.

..... PETITIONER

AND

1 The Deputy Commissioner, Municipal Corporation of Hyderabad, circle

No.3, Hyderabad.
2 M/s. Chandra Residency, rep. by its Builder, Chandramouli,
R/o.1-7-572/23/C, Zamistanpur, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction, preferably one in the nature of Writ of Mandamus declaring the action of the 1st respondent in not taking any action pursuant to the representations of the petitioner dated 12-10-2001, 26-6-2002, 4-3-2003 and 3-11-2004, as illegal, arbitrary and contrary to law and consequently direct the 1st respondent herein to initiate appropriate action against the 2nd respondent for removal of illegal construction of 4th and 5th floors of Chandra Residency bearing Municipal Door No.1-7-572/4B/1, situated at Zamistanpur, Hyderabad pursuant to the said representations of the petitioner forthwith.

Counsel for the Petitioner: MR.S.RAMA SARMA

Counsel for the Respondent No.1: MR.RAMA RAO GANTA

Counsel for the Respondent No.2: ---

The Court, at the stage of admission, made the following:

ORDER:

Aggrieved by the action of the 1st respondent-Deputy Commissioner, Municipal Corporation of Hyderabad (for short 'the Corporation') in not taking any action against the illegal construction of

4th and 5th floors of Chandra Residency, being made by the 2nd respondent in premises bearing Municipal Door No.1-7-572/4B/1, Zamistanpur, Hyderabad, pursuant to the representations of the petitioner dated 12.10.2001, 26.06.2002, 04.03.2003 and 03.11.2004, as illegal and arbitrary, the present writ petition is filed.

Heard the learned counsel for petitioner and learned Standing Counsel for 1st respondent-Municipal Corporation.

The matter came up for admission on 19-11-2004, and since then at the request of the Standing Counsel appearing on behalf of the Corporation, the matter was adjourned six times, but no counter has been filed, and on one occasion, i.e. on 6-12-2004, this Court even directed the appearance of the 1st respondent. Today, when the matter is taken up, learned Standing Counsel for the Corporation, on instructions, submits that the 2nd respondent filed a suit in O.S. No. 5330 of 2001 on the file of the II Junior Civil Judge, Hyderabad and obtained injunction orders against the Corporation not to interfere with the constructions being made by him. However, the suit ultimately was dismissed on 30.01.2003. Pursuant to the dismissal of the suit, the Corporation issued notice under Section 636 of the Hyderabad Municipal Corporation Act, 1955 (for short 'the Act') to the 2nd respondent. Assailing the said notice, the

2nd respondent filed another suit in O.S. No.7392 of 2004 on the file of the X Junior Civil Judge Court, Hyderabad and obtained injunction orders against the Corporation restraining them from interfering with the constructions.

Admittedly, the suit O.S. No. 5330 of 2001 filed by the 2nd respondent on the file of II Junior Civil Judge, Hyderabad, praying to restrain the Corporation from interfering with the constructions, was dismissed on 30.01.2003, and though by the said date, the complaint made by the petitioner was not disposed of and was pending, the Corporation did not take any action thereon. Though the Corporation contends that pursuant to the dismissal of the suit filed by the 2nd respondent they issued notice under Section 636 of the Act, and that the 2nd respondent assailing the said notice, filed another suit in O.S.
No. 7392 of 2004 on the file of the X Junior Civil Judge, Hyderabad, and obtained injunctory orders against them, the fact remains that though the suit filed by the 2nd respondent on earlier occasion was dismissed, the Corporation did not any care to bring the same to the notice of the
X Junior Civil Judge, Hyderabad, and get the injunctory orders vacated, and in the guise of injunctory orders, they allowed the 2nd respondent to go ahead with the constructions. The manner in which the Corporation is allowing the 2nd respondent to go ahead with the constructions without taking any steps to get the injunctory orders vacated despite the fact that the similar suit filed by the 2nd respondent against them, was dismissed by another Court, would unearth a close and hidden nexus between the
2nd respondent and the officials of the Corporation, for had there been no nexus, the Corporation would have definitely brought the fact of dismissal of suit earlier filed by the 2nd respondent, when the 2nd respondent filed another suit challenging the notice issued by them pursuant to the dismissal of the earlier suit.

Under the circumstances, I deem it appropriate to dispose of the writ petition with the following directions.

The 1st respondent-Deputy Commissioner is directed to take immediate steps to file vacate stay petition before the X Junior Civil Judge Court, Hyderabad on out of turn basis bringing the fact of dismissal of the earlier suit filed by the 2nd respondent, and on filing such petition, the X Junior Civil Judge, Hyderabad shall take up the matter on priority, and after affording opportunity of hearing to the 2nd respondent, pass appropriate orders in the suit pending before him in accordance with law. After disposal of the suit filed by the 2nd respondent, the Corporation shall consider and

dispose of the complaint filed by the petitioner. In so far as the inaction and collusion on the part of the officials of the Corporation with the 2nd respondent is concerned, the Commissioner, Municipal Corporation of Hyderabad, is directed to conduct necessary enquiry into the matter and take appropriate action against the concerned, who failed to consider and dispose of the complaint filed by the petitioner in spite of the fact that the suit earlier filed by the 2nd respondent was dismissed, and further inaction on their part in not taking steps to get the injunctory orders, obtained in the subsequent suit by the 2nd respondent, vacated.

With the above directions, the writ petition is disposed of. No costs.

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N.V. RAMANA, J.

Date: 28.01.2005

Nsr/Ksr

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The X Junior Civil Judge, Hyderabad, City Civil Court, Hyderabad.

2 The Deputy Commissioner, Municipal Corporation of Hyderabad, circle

No.3, Hyderabad.
3. The Commissioner, Municipal Corporation of Hyderabad, Hyderabad.

4. 2 CD copies

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